

similar conflict, but the very existence of SEC documents which raised questions about the validity of Four Jacks' integration claims was not voluntarily revealed to Scripps Howard or to the Commission.

34. Even without relying on the failure to disclose requested evidence, the fact that a series of SEC amendments gradually reveals more and more information about the Four Jacks Application shows Four Jacks' principals' extreme reluctance to reveal the truth about that Application in these Registration Statements.<sup>8</sup> A motive for such reluctance is plainly apparent. Revelation of the full truth demonstrated the conflict with Four Jacks' representations to the Commission. Given this clear motive for Four Jacks' principals to seek to avoid having to tell the full truth in their company's SEC statements, their obvious reluctance to disclose the conflict, and their continuing failure to be candid about the conflict with the Commission in this proceeding, there is overwhelming evidence that they have intentionally lacked candor with the Commission and that they

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included two of Four Jacks' four principals: its president, David D. Smith, and non-integrated principal Duncan Smith. See id. and File No. BPCT-850108KQ.

<sup>8</sup> The December 2 and 6, 1993, amendments, like other amendments, were apparently made at the request of the SEC, see T. at 1287, and one can reasonably infer that the new disclosures contained therein were included at the insistence of the SEC. The only alternative explanation--that the Smiths withheld these explanations of their true intentions until after the record was closed in this proceeding and then voluntarily inserted them into the SEC filings--is at least as damaging to Four Jacks' credibility.

made intentional misrepresentations about their integration commitment.

IV. SUMMARY DECISION IS WARRANTED ON THE MISREPRESENTATION ISSUE ADDED AGAINST FOUR JACKS.

35. The existing record not only precludes the grant of Four Jacks' Motion but it also fully supports the grant of summary decision against Four Jacks on the misrepresentation/lack of candor issue. The Commission's rule on summary decision expressly raises the possibility that the facts established in a motion may show that a party other than the moving party is entitled to summary decision. See Summary Decision Procedures, 24 R.R.2d 1715, 1718 (1972). Indeed, Four Jacks received explicit notice that by filing a motion for summary decision, it would raise the possibility of a cross-motion for summary decision against it. See T. at 1411-12.<sup>9</sup>

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<sup>9</sup> At the conference of February 15, 1994, the following exchange took place:

JUDGE SIPPEL: [W]ell, you're talking about a Motion for Summary Decision in your favor on the issue that was added against Four Jacks?

MS. SCHMELTZER: Yeah. That we have the opportunity to file that by February 28th is my understanding.

JUDGE SIPPEL: Well, the motion that -- the cross motion that I was talking about in that situation was a cross motion against Scripps Howard. That's what I'm talking about. They've filed for a Motion for Summary Decision in their favor. You're -- the rules permit this, too. You can file a cross motion against them which I could resolve -- I could conceivably resolve the issue against them without a hearing. That's what

36. Summary decision is appropriate here because Four Jacks' lack of candor and misrepresentation is fully established by the inconsistent statements made by its principals that are contained in documents already before the Commission, including Four Jacks' Application for Channel 2, the Four Jacks principals' various integration pledges, Sinclair's SEC filings, and the Motion itself. See RKO General, Inc. v. FCC, 670 F.2d 215, 231 (D.C. Cir. 1981), cert. denied, 456 U.S. 927, 457 U.S. 1119 (1982) (no need for evidentiary hearing where evidence of lack of candor was obvious from documents filed with the Commission).<sup>10</sup> The documentary case against Four Jacks is further bolstered by the oral testimony Four Jacks' principals have already offered at the hearing and the incredible explanations offered for that testimony in the Motion.

37. Relatedly, summary decision is appropriate because there is ample evidence on the record of Four Jacks' intent to deceive. First, while on clear notice that its principals' representations raised an issue of misrepresentation and lack of candor, Four Jacks has presented an affirmative case that in fact

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they're exposing themselves to. Now, do you want to expose yourself to a motion against Four Jacks without a hearing?

MR. LEADER: We'll decide that.

T. at 1411-12.

<sup>10</sup> The court in RKO also noted that conjecture about the meaning of documentary evidence was not relevant where "the documents speak for themselves." Id. at 230.

confirms the elements of misrepresentation by offering tortured interpretations of Four Jacks' principals' own words.<sup>11</sup> This continuing denial of plain facts demonstrates that Four Jacks' intent is to mislead the Commission as to the meaning of its principals' integration pledges.

38. Second, the Four Jacks principals' representations about resigning their employment were plainly offered to improve Four Jacks' comparative position. Given this motive, it is evident that Four Jacks' principals' false pledge to resign from their then-current employment was "an intentional misstatement of fact intended to deceive" the Commission. See Silver Star Communications-Albany, Inc., 3 F.C.C. Rcd 6342, 6349 (Rev. Bd. 1988), modified, 6 F.C.C. Rcd 6905 (1991). At the very least, the fact that Four Jacks did not disclose its principals intent to remain at Sinclair until after the hearing is conclusive evidence of lack of candor, given the "special duty imposed upon FCC licensees and applicants to go beyond merely avoiding an affirmative misrepresentation, but to be fully forthcoming as to all facts and information relevant to a matter before the FCC, whether or not such information is particularly elicited." Id.

39. Third, Four Jacks' intent to deceive is demonstrated by the fact that it did not provide Sinclair's SEC documents to Scripps Howard in discovery, despite the fact that these

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<sup>11</sup> For example, Four Jacks continues to maintain that its principals are not employed at Sinclair and did not regard themselves as employees during the hearing. See supra Section II.

documents were clearly within the scope of Scripps Howard's document production request. See supra Section III.

40. Finally, summary decision is warranted given the procedural posture of the issue. First, Four Jacks has had adequate notice and opportunity to be heard on the misrepresentation issue pending against it. See Silver Star Communications-Albany, Inc., 3 F.C.C. Rcd 6342, 6349-50 (Rev. Bd. 1988), modified, 6 F.C.C. Rcd 6905 (1991). Second, by filing its Motion for Summary Decision, Four Jacks itself has urged that there is no need for further hearing on these issues and that no purpose would be served by an evidentiary hearing. See RKO General, Inc. v. FCC, 670 F.2d 215, 231-32 (D.C. Cir. 1981), cert. denied, 456 U.S. 927, 457 U.S. 1119 (1982) (no need for evidentiary hearing on misrepresentation issues pending against RKO where it urged that no evidentiary hearing was needed to resolve issue) (citing Colorado Radio Corp. v. FCC, 118 F.2d 24, 26 (D.C. Cir. 1941)). Four Jacks thus has elected to risk summary decision, and it must accept the consequences.

## V. CONCLUSION

41. In conclusion, Four Jacks' Motion for Summary Decision must be denied. The evidence shows contradictory representations by Four Jacks' principals: first that they would resign from their current employment at Sinclair; and then, in a separate, governmentally overseen proceeding and after the record here was closed, that they would neither resign from nor even reduce their

current duties and responsibilities with Sinclair. Particularly since the SEC proceedings were not voluntarily disclosed to Scripps Howard or the Commission in discovery despite a clear duty to do so, there is plain evidence that Four Jacks' principals intentionally misled the Commission in their integration pledges. These facts preclude granting the Motion.

42. Separately, having been given notice that its principals' conduct raised issues of misrepresentation and lack of candor, Four Jacks elected to present its case that no misrepresentation occurred in a motion for summary decision. It thus has enjoyed the opportunity to respond to these issues after receiving notice of the risk to it, and it has presented the evidence it regards as persuasive. As demonstrated herein, however, this presentation ignores crucial evidence of which Four Jacks had clear notice from the Order, and its attempts at exculpatory "explanations" instead only further undermine its credibility. Its Motion offers only obfuscation and explanations that defy both the plain meanings of words as well as the meanings those words have been assigned by Four Jacks' principals themselves.

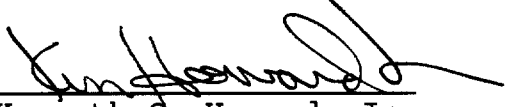
43. Accordingly, under established Commission precedent, there is no need to conduct further proceedings in order to recognize the fact that misrepresentation has occurred directly before the Commission. The facts as presented by Four Jacks itself leave no room for doubt that Four Jacks' principals intended to mislead the Commission by promising to resign their

employment to manage Channel 2, and then--when confronted with the obligation to disclose their real plans in connection with a \$200 million debt offering--revealing that such resignations would not occur. By stating now in declarations that they never intended to comply with their plain resignation promises, Four Jacks' principals have removed the need for further evidentiary hearings. See, e.g., RKO General, Inc. v. FCC, 670 F.2d 215, 229-230 (D.C. Cir. 1981), cert. denied, 456 U.S. 927, 457 U.S. 1119 (1982).

WHEREFORE, Scripps Howard Broadcasting Company hereby requests that the Motion for Summary Decision filed by Four Jacks Broadcasting, Inc. be DENIED and that Scripps Howard's Cross-Motion for Summary Decision Disqualifying Four Jacks Broadcasting, Inc. be GRANTED.

Respectfully submitted,

SCRIPPS HOWARD  
BROADCASTING COMPANY

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Date: March 14, 1994

# ATTACHMENT



INTEGRATION STATEMENT

David D. Smith:

David D. Smith will participate full-time, a minimum of 40 hours per week, in the management of the proposed facility serving as General Manager of the television station. His responsibilities will include supervision of the day-to-day operation of the station, supervision of the hiring and firing of personnel, the formulation of all the station policies and the selection and development of the station's news, public affairs, and other programming. Four Jacks Broadcasting, Inc. ("Four Jacks") will claim quantitative integration credit for Mr. David Smith's participation in station management, and will seek qualitative enhancement for Mr. Smith's past local residence in the community of license for 38 years and his recent relocation to Lutherville, Maryland which is outside of the Baltimore City boundary line but within the service area of the station. Four Jacks will also claim enhancement for Mr. Smith's 25 years of broadcast experience.

In 1978, Mr. Smith started Comark Communications, Inc., a manufacturer of high-power television transmitters for new and old UHF stations. As a principal stockholder in Comark, Mr. Smith negotiated numerous contracts for the sale of transmitters to foreign governments including the People's Republic of China. During the period 1978 to 1986, Comark was directly involved in providing and installing approximately 50% of all the new UHF

television transmitters in the United States. In early 1980, Comark started an affiliate called Comark Television, Inc. Comark became the licensee of television station, WPXT in Portland, Maine. Additionally, Mr. Smith held an ownership interest in WDSI in Chattanooga, Tennessee. These stations were sold in 1983 and 1985, respectively.

In 1984, Mr. Smith left Comark Communications to return to the family controlled business where he became responsible for the operation of WPTT-TV, Pittsburgh, Pennsylvania, and assisted in the construction of WTTE(TV), Channel 28, Columbus, Ohio.

Robert E. Smith:

Robert E. Smith will hold the position of Station Manager and will share responsibility with his brothers for the day-to-day management of the station on a full-time basis (40 hours or more per week). Robert E. Smith has been an employee at Channel 45 since he was 12 years old, working part-time intermittently until 1986. He worked at the television station, WBFF(TV), Baltimore, Maryland, summers during high school and at times during college. During one summer break, he worked with his brother, David D. Smith, at Comark Communications installing UHF television transmitters. Upon his graduation from college in 1986, he became a full-time employee of Channel 45 in Baltimore, Maryland where he was a program manager. In mid-1988, he became a full-time employee of Channel 45's parent, Sinclair Broadcast

Group, Inc. In his present capacity he shares the overall responsibility for management and running the day-to-day operations of the television stations, WBFF(TV), Baltimore, Maryland, WTTE(TV), Columbus, Ohio, WPTT-TV, Pittsburgh, Pennsylvania, WIIB(TV), Bloomington, Indiana, and WTTA(TV), St. Petersburg, Florida, with his three brothers.

Four Jacks will seek credit for Robert Smith's full-time integration proposal, enhanced by lifetime local residence in the service area of the proposed station, his current residence in Baltimore, Maryland, and his past broadcasting experience.

Frederick G. Smith:

Frederick G. Smith will act as Operations Manager of the proposed station and will share responsibility for management of the station with his brothers on a full-time basis (40 hours or more per week). He became a full-time employee of Sinclair Broadcast Group, Inc. on July 1, 1991. Prior to July 1, 1991 and for the year preceding that date, he worked approximately 25 to 30 hours per week. His principal task has been to supervise the various department managers at the Baltimore, Pittsburgh, and Columbus stations. In addition, he reviews film contracts and reviews the hiring and firing of all personnel. He will continue with these tasks on a full-time basis for the proposed station.

Four Jacks will seek quantitative integration credit for Frederick Smith's proposal to work full-time at the television

station, and enhancement credit for his life-time local residence, his current residence within the service area of the proposed station, and his broadcast experience.

Other Matters:

Presently, Sinclair Broadcast Group, Inc., the ultimate parent of television station, WBFF(TV), Baltimore, Maryland, is managed by a committee consisting of the four Smith brothers. All decisions are made by them jointly and they are involved in all aspects of the day-to-day operation of the station. David Smith is primarily responsible for negotiation and selection of film product for the station. The other brothers, however, share this task with him.

When the application for Channel 2 is granted, David, Robert, and Frederick will be involved in the day-to-day operations of Channel 2 on a full-time basis as described above. Though they will carry, respectively, the titles of General Manager, Station Manager, and Operations Manager, they will run the proposed family-owned station as a management committee, ultimately sharing responsibilities for all aspects of station management and operations. As noted in the application, each is an officer and director of the applicant and each will be a full-time management employee of the applicant if its application for Channel 2, Baltimore, Maryland, is granted. To fulfil their integration commitments, each of the brothers will resign from

their then-current employment and will limit or terminate any other activities that might interfere with their integration commitments.

Certificate of Service

I, Ruth Omonijo, a secretary in the law offices of Baker & Hostetler, hereby certify that I have caused copies of the foregoing "Opposition to Motion for Summary Decision by Four Jacks Broadcasting, Inc. and Cross-Motion for Summary Decision Disqualifying Four Jacks Broadcasting, Inc." to be hand-delivered this 14th day of March, 1994 to the following:

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